

SERVICE DATE – MAY 13, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 193 (Sub-No. 3X)

CANTON RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN BALTIMORE CITY, MD.

Digest:¹ This decision allows Canton Railroad Company to end its common carrier obligation to provide freight rail service over approximately 0.23 miles of rail line in Baltimore City, Md., subject to environmental conditions and standard employee protective conditions.

Decided: May 10, 2019

On January 29, 2019, Canton Railroad Company (Canton Railroad) filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 1,200 linear feet (0.23 miles) of rail line located in Baltimore City, Md., sometimes referred to as the OverFlo Track (the Line).² Canton Railroad states that the Line has no milepost or station designations. Notice of Canton Railroad's petition was served and published in the Federal Register on February 15, 2019 (84 Fed. Reg. 4601). No comments were filed in response to Canton Railroad's petition. The Board will grant the exemption from 49 U.S.C. § 10903, subject to an environmental condition and standard employee protective conditions.

BACKGROUND

Canton Railroad seeks to abandon the Line and sell the right-of-way to 601 Haven Street LLC (Haven). (Pet. 1-2; see id. Ex. C at 1, 7.) Haven supports the proposed abandonment, which would facilitate its desire to purchase the right-of-way for non-rail use. (Id. at 2 & Ex. B.) The last time Canton Railroad provided freight rail service over the Line was on December 12, 2017. On December 19, 2017, the only shipper on the Line sold its property to Haven. (Id. at 1 & Ex. C at 1, 7.) Canton Railroad states that no other facilities are located on the Line and no overhead traffic moves over the Line. (Id. at 2 & Ex. C at 1, 7.)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Canton Railroad filed a supplement to its petition for exemption on February 7, 2019.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. There are currently no shippers on the Line, as the only previous shipper sold its property to Haven, which plans to repurpose the property for non-rail use and supports the proposed abandonment. (Pet. 1-2 & Ex. B.) Moreover, there is no overhead traffic on the Line. (*Id.* at 2.) Granting an exemption would expedite regulatory decisions, foster sound economic conditions in transportation, reduce regulatory barriers to exit, encourage efficient management of railroads, and provide for the expeditious handling of this proceeding. *See* 49 U.S.C. § 10101(2), (5), (7), (9), (15). Other aspects of the RTP would not be adversely affected.

Similarly, regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power because, as discussed above, there are no shippers on the Line and no overhead traffic moves over the Line.³ (Pet. 1-2.)

The Board will not consider offers of financial assistance (OFAs) in this case because no formal expressions of intent to file an OFA were filed by the April 1, 2019 deadline. *See* 49 C.F.R. § 1152.27(c)(1)(i).

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose on Canton Railroad the employee protections set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

Environmental Review. Canton Railroad submitted a combined environmental and historic report with its petition and notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the environmental impacts of the proposed abandonment. *See* 49 C.F.R. §§ 1105.7-1105.8, 1105.11. The Board's Office of Environmental

³ Because regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, the Board need not determine whether the proposed abandonment is limited in scope. *See* 49 U.S.C. § 10502(a)(2).

Analysis (OEA) has examined the report, verified the data it contains, and analyzed the potential effects of the proposed action on the quality of the human environment.

On March 29, 2019, OEA issued an Environmental Assessment (EA) in which it recommended that the Board impose a condition that would require Canton Railroad to consult with the Solid Waste Program of the Maryland Department of the Environment (MDE) prior to conducting salvage operations to determine what approvals would be needed for the proper handling and disposal of rail ties and to comply with MDE's reasonable requirements.⁴ Comments on the EA were due by April 29, 2019.

In its Final EA, issued on April 30, 2019, OEA states that it received four comments. On April 5, 2019, the Baltimore City Planning Commission filed a comment in support of the proposed abandonment. On April 8, 2019, the Maryland Historical Trust (State Historic Preservation Office, or SHPO) reaffirmed its concurrence that no historic properties listed in or eligible for inclusion in the National Register of Historic Places would be affected within the right-of-way of the proposed abandonment. Similarly, on April 26, 2019, the Maryland Department of Natural Resources' Chesapeake and Coastal Service Office reaffirmed its prior comments that the proposed abandonment is consistent, to the maximum extent practicable, with its enforceable program policies of the Coastal Zone Management Act, 16 U.S.C. § 1451.

On April 24, 2019, MDE's Land and Materials Administration filed a comment concerning: (1) the need to assess the soil for contamination and characterize any hazardous wastes; (2) the possible need to obtain a hazardous waste generator permit for disposal of contaminated railroad ties; (3) the need to obtain National Pollutant Discharge Elimination System (NPDES) approvals and permits; (4) the possible presence of nontidal wetlands in the area; and (5) the need to consult with the proper Ecological Field Office of the U.S. Fish and Wildlife Service (USFWS).

In response to the comments received as described above, OEA recommends two new environmental conditions in addition to the one it originally proposed. First, OEA recommends a condition that, prior to conducting salvage operations, Canton Railroad consult with MDE's Stormwater Management Program to ensure appropriate consideration of the NPDES requirements and comply with any reasonable requirements. Second, OEA recommends a condition that, if any federally listed threatened or endangered species are encountered during salvage activities, Canton Railroad cease work, notify USFWS's Chesapeake Bay Ecological Services Field Office in Annapolis, Md., consult with USFWS regarding the potential impacts to any encountered federally listed threatened and endangered species, and follow any reasonable

⁴ Because the Board has exclusive jurisdiction over transportation by rail carriers, state and local requirements that unreasonably interfere with railroad transportation are preempted. See 49 U.S.C. § 10501(b); Grafton & Upton R.R.—Pet. for Declaratory Order, FD 35779, slip op. at 4-6 (STB served Jan. 27, 2014).

recommendations of USFWS. The Board agrees with OEA's analysis and will impose all three recommended conditions.⁵

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 Canton Railroad's abandonment of the Line, subject to the employee protective conditions set forth in Oregon Short Line and the conditions that Canton Railroad shall: (a) prior to conducting salvage operations, consult with MDE's Solid Waste Program to determine what approvals would be needed for the proper handling and disposal of rail ties and comply with MDE's reasonable requirements; (b) prior to conducting salvage operations, consult with MDE's Stormwater Management Program to ensure appropriate consideration of the NPDES requirements and comply with any reasonable requirements; and (c) if any federally listed threatened or endangered species are encountered during salvage activities, cease work, notify USFWS's Chesapeake Bay Ecological Services Field Office in Annapolis, Md., consult with USFWS regarding the potential impacts to any encountered federally listed threatened and endangered species, and follow any reasonable recommendations of USFWS.

2. This exemption will be effective on June 12, 2019.

3. Petitions to reopen and stay the effectiveness of the exemption must be filed by May 28, 2019.

4. Pursuant to 49 C.F.R. § 1152.29(e)(2), Canton Railroad shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by Canton Railroad's filing of a notice of consummation by May 13, 2020, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the one-year period, the notice of consummation

⁵ These conditions would also apply to Haven if it purchases the right-of-way. As the Board has explained, salvage conditions remain in place as conditions that attach to the property and apply to salvage activities whenever they occur, even if salvage is conducted years later by a successor in interest. See, e.g., BNSF Ry.—Aban. Exemption—in L.A. Cty., Cal., AB 6 (Sub-No. 477X), slip op. at 8 n.13 (STB served Sept. 16, 2011); Union Pac. R.R.—Aban. Exemption—in Shelby Cty., Tenn., AB 33 (Sub-No. 258X), slip op. at 2 (STB served May 3, 2010).

must be filed no later than 60 days after the satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Board Members Begeman, Fuchs, and Oberman.